

From: [Turner Philip](#)
To: [Teague Kenneth](#); [Tzhone Stephen](#); [Rauscher Jon](#); [Sanchez Carlos](#); [Miller Garyg](#); [Foster Anne](#)
Cc: [Fontenot Alison](#); [Martinez Maria](#); [Meyer John](#)
Subject: Re: U.S. Army Corps of Engineers Draft 2017 Nationwide Permit Regional Conditions- San Jacinto Waste Pits Area of Concern
Date: Tuesday, July 12, 2016 3:27:17 PM
Attachments: [image001.png](#)

I agree that the Corp should not be allowed to circumvent the permit evaluation process, but I think it could be interpreted a little more broadly nowadays.

This process was developed before we knew the full nature and extent of contamination in the area. We also did not yet have a handle on area background at the time.

Phil

From: Teague, Kenneth
Sent: Tuesday, July 12, 2016 3:00 PM
To: Tzhone, Stephen; Turner, Philip; Rauscher, Jon; Sanchez, Carlos; Miller, Garyg; Foster, Anne
Cc: Fontenot, Alison; Martinez, Maria; Meyer, John
Subject: RE: U.S. Army Corps of Engineers Draft 2017 Nationwide Permit Regional Conditions- San Jacinto Waste Pits Area of Concern

Steve- We are drafting our comments on the U.S. Army Corps of Engineers, Galveston District's Regional Conditions on the Corp's proposed reissuance of their Nationwide Permits (attached). Since we talked in June I have looked at other Corps districts Regional Conditions and noted that they have suspended the use of the nationwide permits in a number of places, and for a number of reasons. This suggested to me that we might consider recommending the Galveston District suspend their use of all nationwide permits in the San Jacinto Waste Pits Area of Concern. I have begun discussing the idea with my supervisor, Maria Martinez.

I do want to mention though that I previously discussed our concerns with the current language in the Regional Conditions, and Corps staff indicated that it was actually intended to ensure that the requirements of the permit evaluation requirement process are met. While that relieved my concerns temporarily, my own interpretation of the language is that while it does require applicants who wish to use the nationwide permits to report to the Corps and obtain their support for using them, it also appears to give the Corps the option of determining that the proposed activity "would result in no more than minimal impact to the region", and potentially relieve them of some of the requirements of the permit evaluation requirement process, such as sediment chemical analysis, for example. The truth of the matter is we don't know what effect this Regional Condition has on the permit evaluation requirement process. With this in mind, suspension of nationwide permits in the San Jacinto Waste Pits Area of Concern might be the simplest and most effective way of ensuring that nationwide permits don't allow applicants to avoid complying with the requirements of the permit evaluation requirement process. However, the Corps and the regulated public might not be happy with such an approach, and I don't know what TCEQ would think.

Let us know what you think about this.

Kenneth Teague, PWS, Certified Senior Ecologist
Environmental Scientist
Wetlands Section EPA Region 6
1445 Ross Ave, Suite 1200 (6WQ-EM)
Dallas, TX 75202
phone: 214-665-6687
FAX: 214-665-6689



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From: Tzhone, Stephen

Sent: Tuesday, June 07, 2016 1:33 PM

To: Teague, Kenneth <teague.kenneth@epa.gov>; Turner, Philip <Turner.Philip@epa.gov>; Rauscher, Jon <Rauscher.Jon@epa.gov>; Sanchez, Carlos <sanchez.carlos@epa.gov>; Miller, Garyg <Miller.Garyg@epa.gov>; Foster, Anne <Foster.Anne@epa.gov>

Cc: Fontenot, Alison <Fontenot.Alison@epa.gov>; Smith, Donald-M <Smith.Donald-M@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>; Meyer, John <Meyer.John@epa.gov>

Subject: RE: U.S. Army Corps of Engineers Draft 2017 Nationwide Permit Regional Conditions- San Jacinto Waste Pits Area of Concern

I just contacted Ken and he will contact TCEQ and USACE.

My understanding is that 6SF and 6WQ have not changed the permit evaluation requirement process developed from 2009 and 2011.

If the highlighted language below would entail a change in that process, I would recommend that the interagency workgroup (i.e. 6SF, 6WQ, TCEQ, and USACE) reconvene to ensure that the original intent would still be met (i.e. to minimize permittee exposure to CERCLA liability, while allowing for Houston Ship Channel/Galveston Bay watershed permitted activities under the Clean Water Act Section 404 and Rivers & Harbors Action Section 10).

Thanks,

Stephen L. Tzhone
Superfund Remedial Project Manager
214.665.8409
tzhone.stephen@epa.gov

From: Teague, Kenneth

Sent: Tuesday, June 07, 2016 1:05 PM

To: Turner, Philip <Turner.Philip@epa.gov>; Rauscher, Jon <Rauscher.Jon@epa.gov>; Tzhone, Stephen <tzhone.stephen@epa.gov>; Sanchez, Carlos <sanchez.carlos@epa.gov>; Miller, Garyg <Miller.Garyg@epa.gov>

Cc: Fontenot, Alison <Fontenot.Alison@epa.gov>; Smith, Donald-M <Smith.Donald-M@epa.gov>; Martinez, Maria <Martinez.Maria@epa.gov>

Subject: U.S. Army Corps of Engineers Draft 2017 Nationwide Permit Regional Conditions- San Jacinto Waste Pits Area of Concern

The U.S. Army Corps of Engineers recently issued their INITIAL PUBLIC NOTICE for NATIONWIDE PERMIT REISSUANCE REQUEST FOR COMMENTS. This includes their Draft 2017 Nationwide Permit Regional Conditions, which include a condition related to the San Jacinto Waste Pits Area of Concern.

11. For all work in the San Jacinto River Waste Pits (SJWP) Area of Concern (AOC), authorized under a NWP, requires a waiver from the Galveston District Engineer. The applicant shall notify the Galveston District Engineer (DE) in accordance with the NWP General Condition 32, Pre-Construction Notification (PCN). This PCN shall be used to review the project to determine if it will result in more than minimal effects to the region and does not lessen the restriction provided by any General Condition of the NWPs. The applicant must receive written approval, including a waiver from the Galveston DE prior to starting work in jurisdictional areas of waters of the United States.

I suppose the obvious question is whether or not this condition is consistent with the Permit Evaluation Requirement Process for the San Jacinto Waste Pits Area of Concern, as explained in our letters of October 13, 2009 and January 25, 2011.

Please provide any comments to me by July 7, 2016.

Kenneth Teague, PWS, Certified Senior Ecologist
Environmental Scientist
Wetlands Section EPA Region 6
1445 Ross Ave, Suite 1200 (6WQ-EM)
Dallas, TX 75202
phone: 214-665-6687
FAX: 214-665-6689